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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 590

THE HORACE MANN LEAGUE OF THE UNITED STATES OF AMERICA, INC., ET AL.,
Appellants,

v.

BOARD OF PUBLIC WORKS OF MARYLAND, ET AL.,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS

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Appellees, Board of Public Works of Maryland and Hood College of Frederick, Maryland, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that appellants' appeal from the final judgment of the Court of Appeals of Maryland entered on June 2, 1966, be dismissed on the ground that the appeal presents no substantial federal question.

STATEMENT OF THE CASE

Appellants have appealed from that part of the final judgment of the Court of Appeals of Maryland which affirmed the judgment of the Circuit Court for Anne

Arundel County upholding the constitutionality of Chapter 88 of the Laws of Maryland, 1962. Chapter 88 provides for the sale of certificates of indebtedness of the State of Maryland and for the payment of the net proceeds of the sale to Hood College on a matching-fund basis for the construction of a dormitory and classroom building. Before the certificates of indebtedness had been issued, appellants filed a bill of complaint in the Circuit Court for Anne Arundel County challenging the validity of this statute and three others which provide on similar terms, for the payment of funds to Saint Joseph College of the Daughters of Charity of Saint Vincent de Paul, Inc. (Saint Joseph College); the College of Notre Dame of Maryland, Inc. (College of Notre Dame) and Western Maryland College for the construction of academic facilities.

The trial court held that no provision of either the state or federal constitution prohibits any of the grants and dismissed the bill. The Court of Appeals in a 4-3 decision held that Saint Joseph College, College of Notre Dame and Western Maryland College were sectarian in a legal sense under the First Amendment, and may not constitutionally receive the grants. (242 Md. 645 at 678 and 684.) A petition for certiorari docketed as No. 473 October Term, 1966 and presently pending, has been filed by the Board of Public Works and these three colleges. However, the Court of Appeals unanimously agreed with the trial court that the legislature might validly appropriate funds for the construction of educational facilities at Hood College, the majority reasoning that the institution, while affiliated with a particular religious denomination, was not "sectarian." (242 Md. at 675 and 700).

STATEMENT OF FACTS

In his opening statement, counsel for the appellants conceded that appellants' case against Hood "rests upon the fact that Hood College requires compulsory religious chapel attendance," and were it not for such the "case against [Hood] would probably fail, because they would then be in the category not unlike Columbia, Harvard, Yale [and] Princeton. . . ." (E. 80)* The trial court found that,

> "As to Hood, the only religious connection appears to be a United Church [of Christ] Chaplain, and 7 United Church Trustees in a Board of 30** members. Two semester hours out of 124 are required in an objective study of the Bible and some attempt is made to require the students to attend 14 evening services in the Chapel and 7 Sunday services also in the Chapel per semester, less 6 cuts permitted for both. At the services, ordained Ministers of various denominations act as speakers." (E. 75)

The Court of Appeals summarized the facts with respect to Hood College as follows:

> "According to the College Bulletin issued in 1963, Hood is 'an independent liberal arts college for women,' and it 'is church related through its affiliation with the United Church of Christ [U.C.C.], but welcomes students of all religious faiths.' It is listed in a Tabulation of the Danforth Foundation of Institutions Associated with Religious Bodies as 'reflecting religious orientation.' It is a small college, limited to an enrollment of about 650 students, and

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* Reference is to the joint record extract filed by appellants with their Jurisdictional Statement.

** Refers to actual number of functioning trustees prior to institution of suit. (E. 535)

is governed by a Board of Trustees consisting of 35 members. Seven of these are elected by agencies of the U.C.C.; 22 by the Board itself; and 6 by the Alumnae Association from its membership. The President is selected by the Board, and the President, after screening by appropriate college officials, selects the administrative personnel. Faculty members are usually located by the chairman of the department where a vacancy occurs. They are selected upon an analysis of their academic credentials, qualifications, and earned degrees, and their 'character and congeniality.' There are no sectarian requirements for members of the faculty; the President thought that Hood had 'virtually all shades of religious affiliations represented [thereon] and non-religious affiliation.' In the year 1963-1964, there were 7 Episcopalians, 2 of the Jewish faith, 3 Lutherans, 6 Methodists, 1 with no affiliation indicated, 13 Presbyterians, 2 listed as Protestant but non-denominational, 5 Roman Catholics, 3 members of the Society of Friends, 3 Unitarians, and 10 members of the U.C.C., a rather heterogeneous faculty for a sectarian school.

"There is no requirement that any member of the officers of administration be of any particular religious denomination, and, in fact, the officers of administration do not represent any particular church or religious body. Included among these are Baptists, Lutherans, Methodists, Presbyterians, one Roman Catholic and one Unitarian, and 7 members of the U.C.C.

"There is no requirement that the Chaplain, who supervises, generally, the religious lives of the student body be of any particular denomination, although the present one is a member of the U.C.C.

"The student body is primarily selected according to educational records supplied by the students and

by the schools from whence they come; there is absolutely no requirement based on race, creed, color, or sectarian affiliation in the student body. An examination of their religious affiliation for the year 1963-64 shows such a diversification that it would unduly prolong this opinion to include them all. Among a student body of some 675 students, were included 146 Episcopalians, 29 Jewish students, 83 Methodists, 72 Roman Catholics, 108 Presbyterians, and 89 members of the U.C.C.

"The college confers only two earned degrees; the A.B. degree, which is, of course, a liberal arts degree; and the B.S. degree in Home Economics. It has a department of religion and philosophy; the courses taught therein are conducted in the same manner as the courses in other departments. These courses are not geared to aiding the Protestant religions or any other; they are primarily historical studies in religion and 'there is absolutely no attempt at indoctrination in any way.' The President was emphatic in stating that he believed proselytizing had no place in higher education. The professors in the religious field are not confined to members of the U.C.C. or to Protestants. In addition, there is no attempt by the U.C.C., or any other group, to select texts or to offer suggestions as to which texts should be used, and there are no courses in religion or philosophy, or anywhere else in the curriculum, which are designed to train for the ministry or religious work. The requirements for attendance at chapel (indeed, if they may be termed requirements from the evidence) do not call for frequent services, with the student being allowed generous 'cuts' without excuse. On the Wednesday evening services, of which there are approximately 15 per semester, clergymen of various denominations come in and talk to the students. These include Protestants, Roman Catholics, Jewish Rabbis, and a

Humanist (the President of Hood, after listening to him, being unable to state what his religious preference was). This same general pattern is followed for the Sunday evening services, but not to the same extent as the services on Wednesday evenings. The students are encouraged to maintain ties with the churches of their own denomination while at the college, and each Sunday morning they are released for the purpose of going to such churches in the locality.

"In the year mentioned above, the U.C.C. contributed 2.2% of the college's total operating budget; but contributed nothing in the way of capital gifts, with the exception of one gift in the amount of $10,000 for endowed scholarships.

"The college has a 'very loose relationship' with the Council for Higher Education of the U.C.C., all of the church-related colleges related to the U.C.C. automatically becoming members of the Council.

"During the summers the college permits various civic and religious groups to utilize their campus for programs for which modest charges are made. The school has no control over the programs, and, as far as the record discloses, the programs are not confined to church affairs or to any particular denominations.

"The facilities to be housed by the grant herein involved will be a new academic building and a dormitory; no religious activities will be conducted therein." (242 Md. at 672-75.)

Based on these facts which were undisputed, the majority of the Court of Appeals concluded that Hood College was not "sectarian" and therefore held, under the test adopted by that court, that Hood College could receive the grant named in the act.

ARGUMENT

Appellants' argument in support of its claim that the grant provided for in Chapter 88, Laws of Maryland, 1962 violates the "establishment" clause of the First Amendment to the federal constitution is based upon the claim that Hood College is a "sectarian" institution, and as such may not receive the grant. Appellees agree with the petitioners in No. 473 that this issue — whether public funds can be appropriated to a sectarian college for secular purposes — does present a substantial federal question. However, the trial court's findings of fact and the findings of fact of the Court of Appeals make it perfectly clear that Hood College is not sectarian.

In an attempt to prove the sectarian character of Hood College, appellants assert here, as they did in the state courts, that it is necessary to review and analyze a variety of data about the institution including the religious affiliation of trustees, administrative officers, faculty and student body; the sources of financial support; the curriculum, textbooks and other required reading; the form and content of the instruction given; the nature of the extracurricular activities of students; the physical characteristics of the buildings; the official and unofficial publications of the institution and of various organizations with which it is connected, including its alumnae bodies; the activities of its graduates; and from all these and other data to make a determination as to whether the institution is sectarian. Extensive documentary and oral evidence was introduced by the appellants and the appellees with respect to these items.

Both the trial court and the Court of Appeals weighed the evidence with respect to the factors noted and made

the findings of fact above quoted. These findings, supported by the uncontradicted evidence in the case should be accepted on this appeal. *Watts v. Indiana,* 338 U.S. 49. See Jaffe, *Judicial Review: Constitutional and Jurisdictional Fact,* 70 Harv. L. Rev. 953 (1957). Based on these facts the Court of Appeals, after adopting the "sectarian" test urged by appellants, and after finding College of Notre Dame, Saint Joseph College and Western Maryland to be sectarian, found that Hood College was not sectarian.

Appellees do not concede that the "sectarian" test is the proper one to be applied in this case. However, assuming for purposes of this motion that it is, this appeal does not present a substantial federal question since the findings clearly demonstrate that Hood College is not sectarian and does not materially differ from admittedly secular institutions.

CONCLUSION

For the reasons stated above, this appeal should be dismissed.

Respectfully submitted,

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